

House Bill 1060 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Williams of the 165th, Barnard of the 166th, Parrish of the 156th, O'Neal of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 52 of the Official Code of Georgia Annotated, relating to the Georgia Ports Authority, so as to provide for the comprehensive revision of provisions regarding such authority; to change certain provisions regarding definitions; to change certain provisions regarding projects and facilities; to change certain provisions regarding powers of such authority; to change certain provisions regarding revenue bonds; to change certain provision regarding fees, rentals, and charges; to change certain provisions regarding operational duties; to change certain provision regarding status, investment, sale, and reinvestment of moneys; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 52 of the Official Code of Georgia Annotated, relating to the Georgia Ports Authority, is amended by revising Code Section 52-2-2, relating to definitions regarding such authority, as follows:

"52-2-2.

As used in this chapter, the term:

(1) 'Authority' means the Georgia Ports Authority created by Code Section 52-2-4.

(2) 'Bonds' or 'revenue bonds' means any bonds issued by the authority under this chapter, including refunding bonds.

(3) 'Cost of the project' means the cost of acquisition and construction, the cost of all lands, properties, rights, easements, and franchises acquired, the cost of all machinery and equipment, financing charges, interest prior to and during construction or installation and for ~~one year~~ up to three years after completion of construction or installation, cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project, administrative expense, the costs of establishing and maintaining any necessary

27 funds and reserve funds with respect to the financing or operation of any project, and
28 such other expenses as may be necessary or incident to the financing herein authorized,
29 the including the fees and costs of trustees, paying agents, remarketing agents, and other
30 fiscal agents, costs of bond insurance, letter of credit fees, reimbursement agreement fees,
31 and other loan, credit enhancement, or guarantee fees and, to the completion of
32 construction or installation of any project, the placing of the same in operation, and the
33 condemnation of property necessary for such construction, installation, and operation.

34 (4) 'Harbor' includes any place natural or artificial in which vessels capable of moving
35 articles of commerce on water may be loaded, unloaded, or accommodated.

36 (5) 'Port' and 'seaport' include any place natural or artificial in which seagoing vessels
37 may be sheltered or loaded or unloaded.

38 (6) 'Project' includes wharves, docks, ships, piers, quays, elevators, cranes, cargo
39 handling equipment, computer hardware and software, technology, compresses,
40 refrigeration storage plants, and warehouses and may include buildings and facilities or
41 equipment and machinery to be used in the manufacturing, processing, assembling,
42 storing, or handling of any cargo, agricultural or manufactured produce or products or
43 produce and products of mining or industry, if the use and operation thereof, in the
44 judgment of the authority, will result in the increased use of port facilities, the
45 development of the system of state docks, or, in connection therewith, promote the
46 agricultural, industrial, and natural resources of this state; provided, however, that no
47 such building or facility may shall be constructed by the authority unless the building or
48 facility is located on or in the environs of property now owned by in which the authority;
49 or hereafter acquired by the authority, for port development purposes has an interest.

50 Any project may include other structures and any and all facilities needful for the
51 convenient use of the same in the aid of commerce, including the dredging of harbors and
52 approaches thereto and the construction of belt-line railroads, railroad sidings, roads,
53 highways, bridges, causeways, and approaches, necessary or useful in connection
54 therewith, and shipping facilities and transportation facilities incident thereto and useful
55 or convenient for the use thereof, including terminal railroads, and also airports, seaplane
56 bases, and air transportation terminals. There may be included as a part of any project
57 any public utility facilities necessary or desirable to supply public utility services to other
58 parts of such project or to the users of any of the facilities of the authority, which public
59 utility facilities may include, but without limitation, facilities for the supplying of
60 electricity, gas, and water and for the collection and disposal of storm and sanitary
61 sewage. There may be included as part of any project all appurtenances, equipment, and
62 machinery of every kind and nature necessary or desirable for the full utilization of the
63 project."

SECTION 2.

Said chapter is further amended by revising Code Section 52-2-3, relating to projects and facilities of such authority, as follows:

"52-2-3.

Any project shall be deemed 'self-liquidating' if, in the judgment of the authority, the revenues and earnings ~~thereof~~ of the authority or of the project or from the terminal or facilities of which the project shall become a part will be sufficient to pay the cost of constructing, maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of such project. Any buildings or facilities acquired by the authority under this chapter which are to be utilized in the manufacturing, processing, assembling, storing, or handling of any agricultural or manufactured produce or products or produce and products of mining or industry, which may be acquired by the authority for operation by a corporation, entity, or persons other than the authority, as distinguished from facilities acquired by the authority for operation by it as a port and allied facilities for the direct use of the public, shall be acquired and financed under this chapter only if, prior to the issuance of bonds therefor, the authority shall have entered into a lease or leases thereof or an agreement or agreements for the sale thereof pursuant to the terms of which the lessees or purchasers shall pay to the authority such rentals or installment purchase payments, or both, as upon the basis of determinations and findings to be made by the authority will be fully sufficient to pay principal of and interest on the bonds issued by the financing thereof, to build up and maintain any reserves deemed by the authority to be advisable in connection therewith, and to pay the cost of maintaining the buildings and facilities in good repair and of keeping them properly insured, unless the leases or agreements obligate the lessees or purchasers to pay for such insurance or maintenance. The authority is given full power and discretion to enter into any such agreements or leases as may in its judgment be desirable for the best interests of the authority. Any such agreement or lease may provide that any surplus capacity of the buildings or facilities which are the subject matter thereof may be utilized by and for the benefit of the general public, in which event, such surplus capacity may be maintained or operated, or both, by either the authority or by the lessee or purchaser under the lease or agreement, or in part by each, all as may be provided in the lease or agreement. Any project may include in part one or more buildings or facilities or combinations thereof to be leased or sold as provided in this ~~paragraph~~ Code section and in part other facilities described in paragraph (6) of Code Section 52-2-2, the revenues of the whole being allocated and pledged to the financing of the project as a whole; and in such event, the requirements of this ~~paragraph~~ Code section applicable to buildings or facilities to be

leased or sold shall be applicable only to the part of the project which consists of the buildings or facilities to be so leased or sold."

SECTION 3.

Said chapter is further amended by revising Code Section 52-2-9, relating to powers of such authority, as follows:

"52-2-9.

The authority shall have the following powers:

- (1) To have a seal and alter the same at pleasure;
- (2) To acquire, hold, and dispose of personal property for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with and subject to any and all existing laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or to dispose of the same in any manner it deems to the best advantage of the authority. The authority shall be under no obligation to accept and pay for any property condemned under this chapter, except from the funds provided under the authority of this chapter. In any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be just to the authority and to the owners of the property to be condemned. No property shall be acquired under this chapter upon which any lien or other encumbrance exists unless at the time the property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the lien or encumbrance in full; provided, however, that nothing in this paragraph shall prohibit the authority from acquiring property, real or personal, tangible or intangible, from the Brunswick Port Authority as otherwise authorized under this chapter and the laws of this state; and, if the authority deems it expedient to construct any project on lands the title to which then is in the State of Georgia, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority upon payment to the Office of Treasury and Fiscal Services for the credit of the ~~sinking~~ general fund of the state treasury of the reasonable value of such lands, such value to be determined by three appraisers to be agreed upon by the Governor and the ~~chairman~~ chairperson of the authority;
- (4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation;
- (5) To make contracts and to execute all instruments necessary or convenient, including contracts for acquisition, construction, and installation of projects and leases of projects

or contracts with respect to the use of projects which it causes to be erected or acquired, and to make such contracts and leases with the state, state institutions, and departments and agencies of the state; rentals under leases with the state or any department, agency, or institution of the state shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of this state or from any other funds lawfully available.

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, as defined in paragraph (6) of Code Section 52-2-2, to be located on property owned by the authority, the cost of any such project to be paid from the proceeds of revenue bonds or other obligations of the authority or from such proceeds and any grant from the United States of America or any agency or instrumentality thereof;

(7) To accept loans and grants, either or both, of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable from earnings of such projects and to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state;

(10) To do all things necessary or convenient to carry out the powers expressly given in this chapter;

(11) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof in any matter coming within the purposes or powers of the authority;

(12) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the authority may deem necessary or expedient in facilitating its business;

(13) To do any and all other acts and things in this chapter authorized or required to be done, whether or not included in the general powers mentioned in this Code section;

(14) To receive gifts, donations, or contributions from any person, firm, or corporation;

(15) To contract with any municipality or county for the leasing, operation, or management of real or personal property in or adjacent to any seaport of this state;

(16) To develop and improve the harbors or seaports of this state for the handling of waterborne commerce from and to any part of this state and other states and foreign countries;

(17) To acquire, construct, equip, maintain, develop, and improve said harbors or seaports and their port facilities;

(18) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without this state, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(19) To own, lease, and operate tug boats, locomotives, and any and every kind of character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, merchandise, or articles of commerce in, on, or around its projects;

(20) To hold, use, administer, and expend such sum or sums as may hereafter be appropriated by authority of the General Assembly for any of the purposes of the authority;

(21) To do any other things necessary or proper to foster or encourage the commerce, domestic or foreign, of the state, of the United States of America, or of the several sister states; and

(22) To appoint and select employees designated as security guards who shall have a limited power to make arrests for certain offenses committed on any property under the jurisdiction of the Georgia Ports Authority."

SECTION 4.

Said chapter is further amended by revising Code Section 52-2-11, relating to additional powers regarding indebtedness, as follows:

"52-2-11.

The Georgia Ports Authority shall have and may exercise the following powers:

(1) The authority may borrow money for its corporate purposes and may execute and deliver long-term and short-term notes, commercial paper, bond anticipation notes, and other obligations or evidences of indebtedness therefor and may secure such indebtedness in such manner as the authority may provide by its resolution authorizing the indebtedness to be incurred, provided that the authority shall not pledge to the payment of the indebtedness revenue pledged to the payment of any other indebtedness then outstanding or encumber property in violation of the terms of any existing contract, agreement, or trust indenture securing existing indebtedness.

(2) The authority may from time to time sell or otherwise dispose of surplus personal property and may sell or otherwise dispose of land and any improvements thereon acquired by the authority pursuant to law and which the authority may determine is not required for port or warehouse operations or for the future expansion and improvement of the state system of docks, including property which is suitable for industrial

development. Any such property may be sold, leased, or otherwise disposed of upon such terms and conditions as may be provided by resolution of the authority. The proceeds of any such sale shall be used by the authority for the purposes provided by law. However, any sale of land or leasing of same and mortgaging of same or conveying the same as security for a loan as provided under this Code section shall be first approved in writing by the Governor, the state auditor, and the Attorney General."

SECTION 5.

Said chapter is further amended by revising Code Section 52-2-19, relating to revenue bonds, as follows:

"52-2-19.

The bonds may be issued in coupon, ~~or in registered, or book-entry form, or both,~~ as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest."

SECTION 6.

Said chapter is further amended by revising Code Section 52-2-23, relating to approval of revenue bonds, as follows;

"52-2-23.

Whenever the authority determines to issue its bonds or other obligations, it shall ~~call upon~~ obtain the approval of the Georgia Building Authority to render advice and to perform, as its agent, ministerial services in connection with the marketing of the bonds. State Financing and Investment Commission and otherwise comply with the provisions of Article 2 of Chapter 17 of Title 50, the 'Georgia State Financing and Investment Commission Act.'"

SECTION 7.

Said chapter is further amended by revising Code Section 52-2-31, relating to fees, rentals, and charges, as follows:

"52-2-31.

(a) The authority is authorized to fix and to revise from time to time fees, rentals, and other charges for the use of each project and for the services and facilities furnished by the same and to charge and collect the same and to lease and to make contracts with any person, firm, or corporation with respect to the use of any project or part thereof. Such rentals and other charges shall be so fixed and adjusted in respect of the aggregate thereof from the project or projects for which a single issue of revenue bonds is issued; or from the authority

242 or the terminal or facilities of which the project or projects are a part, so as to provide a
243 fund sufficient with other revenues of the project or projects, if any, to pay:

244 (1) The cost of new construction of projects;

245 (2) The cost of maintaining, repairing, and operating the project or projects, including
246 reserves for extraordinary repairs and insurance and other reserves required by the
247 resolution or trust indenture, unless such cost shall be otherwise provided for; and

248 (3) The principal of the revenue bonds and the interest thereon as the same shall become
249 due.

250 (b) The revenues and earnings derived from the projects for which a single issue of bonds
251 is issued or from the authority or the terminal or facilities of which the project or projects
252 are a part, except the part of such part thereof revenues and earnings as may be required to
253 pay the cost of maintaining, repairing, and operating the project or projects or the terminal
254 or facilities of which the project or projects are a part, and to provide such reserves therefor
255 as may be provided for in the resolution authorizing the issuance of the revenue bonds or
256 in the trust indenture, shall be set aside at such regular intervals as may be provided in the
257 resolution or the trust indenture in a sinking fund which is pledged to, and charged with the
258 payment of:

259 (1) The interest upon the revenue bonds as the interest falls due;

260 (2) The principal of the bonds as the same falls due;

261 (3) The necessary charges of paying agents for paying principal and interest; and

262 (4) Any premium upon bonds retired by call or purchase as hereinabove provided.

263 The use and disposition of such sinking fund shall be subject to such regulations as may
264 be provided in the resolution authorizing the issuance of the revenue bonds or in the trust
265 indenture, but, except as may otherwise be provided in the resolution or trust indenture, the
266 sinking fund shall be a fund for the benefit of all revenue bonds without distinction or
267 priority of one over another. Subject to the provisions of the resolution authorizing the
268 issuance of the revenue bonds or the trust indenture, any moneys in such sinking fund in
269 excess of an amount equal to one year's interest on all revenue bonds then outstanding may
270 be applied to the purchase or redemption of bonds. All revenue bonds so purchased or
271 redeemed shall forthwith be canceled and shall not again be issued."

272 **SECTION 8.**

273 Said chapter is further amended by revising Code Section 52-2-33, relating to operational
274 duties, as follows:

275 "52-2-33.

276 It shall be the duty of the authority to prescribe rules and regulations for the operation of
277 each project constructed under this chapter, including rules and regulations to ensure

278 maximum use of each such project, and to impose rentals and other charges for the use of
279 the facilities furnished by or related to the use of such project and to collect the same from
280 all persons, firms, or corporations using the same."

281 **SECTION 9.**

282 Said chapter is further amended by revising Code Section 52-2-36, relating to status,
283 investment, sale, and reinvestment of moneys, as follows:

284 "52-2-36.

285 (a) All moneys received pursuant to the authority of this chapter, whether as proceeds from
286 the sale of revenue bonds, as grants or other contributions, or as revenues and earnings,
287 shall be deemed to be trust funds to be held and applied solely as provided in this chapter.
288 The authority shall, in the resolution providing for the issuance of revenue bonds or in the
289 trust indenture, provide for the payment of the proceeds of the sale of the bonds and the
290 earnings and revenues to be received to any officer who or any agency, bank, or trust
291 company which shall act as trustee of such funds and shall hold and apply the funds to the
292 purposes of this chapter, subject to such regulations as this chapter and the resolution or
293 trust indenture may provide.

294 (b) Subject to such restriction as provided by resolution passed before the issuance of its
295 bonds or by the trust indenture securing the bonds, the authority may invest any moneys
296 received by it pursuant to authority of this chapter in obligations which are eligible as
297 security for the investment of trust funds ~~under the rules and regulations of the Federal~~
298 ~~Reserve Board~~; and the authority may, by resolution, provide for the sale of any such
299 investment and for the reinvestment of the proceeds thereof."

300 **SECTION 10.**

301 This Act shall become effective upon its approval by the Governor or upon its becoming law
302 without such approval.

303 **SECTION 11.**

304 All laws and parts of laws in conflict with this Act are repealed.